

### **REMARKS**

Applicants respectfully request reconsideration. Claims 1-18 were previously pending in this application. No claims have been canceled, added or amended. As a result, claims 1-18 are still pending and presently under consideration for examination with claim 1 being the sole independent claim. No new matter has been added.

#### ***Rejections Under Non-Statutory, Obviousness-Type, Double Patenting***

Claims 1-6 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,669,710. However, the Office Action stated that a timely filed Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) may be used to overcome these rejections. Without acceding to the correctness of any of the above rejections, enclosed herewith is a Terminal Disclaimer with respect to U.S. Patent No. 6,669,710 in compliance with 37 C.F.R. §1.321(c) to overcome these rejections. In view of this Terminal Disclaimer, claims 1-6 are believed to be in allowable condition.

#### ***Rejections Under 35 U.S.C. §102***

In the Office Action dated November 16, 2006, claims 1-18 were rejected under 35 U.S.C. §102(b) as being anticipated by Nash (U.S. Patent No. 5,938,672). Applicants respectfully traverse this rejection.

Independent claim 1 is directed to a method including inserting a surgical instrument into a surgical field of a patient, creating a liquid jet with the surgical instrument, and driving rotation of a rotatable component of the surgical instrument with the liquid jet.

Nash does not teach or suggest driving rotation of a rotatable component of a surgical instrument *with the liquid jet*, as recited in independent claim 1. Nash discloses a system and method for opening up a lumen, such as a blood vessel. The system 20 includes an atherectomy catheter 22 and at the distal end of the catheter 22 there is a working head 32 that rotates about a

longitudinal axis of a catheter 22 to mechanically impact occlusive material in the lumen. The system in Nash also pumps an infusate liquid out the distal end of the catheter. The liquid may recirculate particles that are broken off from the occlusive material in the lumen. Aspiration means then withdraw the liquid along with debris particles in to the system 20.

The Office Action points to FIGS. 1-6 in Nash, but there is no further information about how Nash purportedly illustrates driving rotation with a liquid jet. Therefore, Applicants respectfully disagree.

There is no teaching or suggestion in Nash to drive rotation of a rotatable component of a surgical instrument *with a liquid jet*. In contrast, the rotating working head 32 in Nash is powered by a drive sub-system 28 which includes either an air turbine motor 70 or an electric motor. (Nash, Col. 8, line 52 – Col. 9, line 6). Nash does disclose the use of an infusate liquid, but there is no teaching or suggestion to use the liquid to drive rotation of any components.

Accordingly, the rejection of claim 1 as being anticipated by Nash should be withdrawn, and reconsideration is, therefore, respectfully requested.

Claims 2-18 depend from claim 1 and are patentable for at least the same reasons as discussed above, and reconsideration of the rejection of these claims is also respectfully requested.

**CONCLUSION**

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

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